

U.S. DEPARTMENT OF LABOR  
Employment and Training Administration  
Washington, D.C. 20210

REPORT ON STATE LEGISLATION

REPORT NO. 4  
September 2017

**COLORADO**

Rule 14084

ADOPTED May 9, 2017  
EFFECTIVE July 1, 2017

Coverage

In addition to specified factors in section 8-70-115, Colorado Revised Statutes, the appeals officer must consider any other relevant factors when considering employee status with the company to whom services are provided, including but not limited to: the relationship between the company and the worker; the totality of the circumstances of the relationship between the worker and the company; the degree of direction and control over the worker, not to include requirements of any state or Federal statute or regulation pursuant to direction and control.

Provides that, in making a determination of employee/independent contractor status, the Division of Employment and Training must consider whether the worker engages in a business that is separate and distinct from the company for whom services are performed and may consider if the worker performs services for multiple businesses.

Requires the division to consider multiple factors in its totality in making a determination of the employee relationship. Factors that are considered include: the date the worker's business started and whether the company required the worker to start the business in order to perform services; if the worker markets his or her own business, and the means used for marketing; and if the worker has a business that is viable beyond the scope of the agreement with the company for whom services are performed. Factors used to determine the viability of a worker's business include whether:

- the worker is economically independent or is substantially dependent on the company for whom services are provided;
- there is a permanent or continuous relationship, and any industry-specific conditions that are relevant;
- there is a risk to the worker's business investment such that there is a risk of suffering a loss;
- tools are provided for the worker;
- the worker may or does employ others to complete the work;
- the worker carries his or her own liability insurance and other relevant types of business insurance;

- the number of hours a week the worker performs services are consistent with status determination;
- the worker seeks other work for his/her business in the same field;
- the worker has the ability to accept or reject work being offered; and
- the service provided is an integral part of the worker's business.

Provides that the evidence and circumstances must demonstrate that the worker is an independent contractor and that the existence of an agreement, even if signed by the worker, is not determinative of the worker-business relationship for unemployment purposes.

Provides that the company for whom services are performed has the burden to establish, by a preponderance of the evidence, that the worker is free from control and direction in the performance of the work and is customarily engaged in an independent trade, occupation, or profession. A written document that meets the factors in the statute may establish a rebuttable presumption of the status and shift the burden of proof to the worker, but is not conclusive of the worker's status as an independent contractor.

Provides that the Division may provide educational information and a nonbinding advisory opinion as it relates to the worker classification. The Division may develop industry specific guidance, in collaboration with industry representatives, to address unique factors and situations when making a worker's status determination.

**KANSAS**      HB 2329  
(CH 28)

ENACTED April 7, 2017  
EFFECTIVE July 1, 2017

#### Nonmonetary Eligibility

Provides that, if any separation, termination, severance, or other similar payment is paid with respect to a month, then the amount deemed to be received with respect to any week during such month shall be computed by multiplying such monthly amount by 12 and dividing the product by 52. If there is no designation of the period with respect to which payments to an individual are made, then an amount equal to such individual's normal weekly wage shall be attributed to and deemed paid with respect to the first and each succeeding week following payment of the separation pay to the individual until such amount so paid is exhausted. (Previously, week following the individual's separation from the employment of the employer making the payment until such amount so paid is exhausted.)

Provides that, notwithstanding the reemployment provisions of section 44-705(e) of the Employment Security Law and amendments thereto, any individual whose benefit amount is completely reduced by any separation, termination, severance, or other similar payment for 52 or more weeks shall, upon exhaustion of the separation pay, be entitled to a new benefit year based upon entitlement from the base period of the claim that was reduced.

**MARYLAND**      SB 1169  
(CH 733)

ENACTED May 25, 2017  
EFFECTIVE October 1, 2017

## Financing

Provides that benefit charges may be waived for benefits paid during a period in which an employer shutdown is due to a natural disaster if the Governor has declared a state of emergency due to the natural disaster. The waiver may be in effect only until the date the employing unit reopens or until 4 months after the disaster, whichever is earlier.

**MARYLAND**

Rule 124091

ADOPTED March 30, 2017

EFFECTIVE April 24, 2017

## Administration

Amends procedures to eliminate paper claims filing and to change the continued claim filing period from biweekly to weekly.

Requires continued claims to be filed no later than 5 p.m. on the Friday following the week for which benefits are claimed (previously 14 days) in order to be considered timely. Eliminates paper claims filing for reactivating a claim or filing a new claim if a timely continued claim is not filed.

Provides procedures for reactivating a claim or filing a new claim if a timely continued claim is not filed.

Provides that claimant appointments may be scheduled to monitor continuing eligibility (previously required).

**MINNESOTA**

SB 1549  
(CH 35)

ENACTED May 11, 2017

EFFECTIVE August 1, 2017

## Coverage

Includes in the definition of “noncovered employment” employment for an elementary or secondary school with a religious education curriculum if it is operated by a church, a convention, or association of churches, or a nonprofit organization that is operated, supervised, controlled or principally supported by a church, a convention, or an association of churches.

Deletes from the definition of employment service performed by an agent driver or commission driver engaged in certain services, and a traveling or city salesperson engaged in full-time solicitation on behalf of certain businesses.

## Monetary Entitlement

Provides that a benefit account may be withdrawn after the expiration of the benefit year if the individual was not paid any unemployment benefits on the withdrawn account; new work requirements will not apply.

Eliminates language related to cooperative agreements for unemployment benefits with foreign governments.

### Nonmonetary Eligibility

Provides that an individual suspended from employment for aggravated employment misconduct is ineligible for benefits for the duration of the suspension.

Provides that a suspension from employment without pay that is of indefinite duration or is for more than 30 calendar days is considered a discharge at the time the suspension begins.

Defines “good cause,” as it relates to a request for reconsideration to an unemployment law judge, as a reason that would have prevented a reasonable person acting with due diligence from submitting the evidence.

Defines a leave of absence as a temporary stopping of work that has been approved by the employer.

### Overpayments

Authorizes the department to issue a determination of ineligibility within 48 months of establishing a benefit account if the applicant obtained benefits through misrepresentation (previously fraud) or if the department has filed an intervention with a worker’s compensation appeal.

Provides that an individual has committed misrepresentation (previously fraud) if the individual is overpaid unemployment benefits by making a false statement or representation without a good faith belief as to the correctness of the statement or representation.

Requires the state Commissioner of Economic Security to penalize an employer if any employee, officer, or agent of the employer made a false statement or representation or knowingly failed to disclose a material fact in order to: assist an individual to receive benefits to which he or she was not entitled; prevent or reduce the payment to an individual; or avoid or reduce any payment required from the employer.

Provides that, if an underpayment of employer contributions is \$500 or less, the individual is guilty of a gross misdemeanor; if the underpayment exceeds \$500, the individual is guilty of a felony.

**NEBRASKA**

L 172

ENACTED May 9, 2017

EFFECTIVE January 1, 2018

### Administration

Eliminates obsolete language and reorganizes certain section numbers for the unemployment compensation statutes.

Eliminates the definition of institution of higher education.

Changes the date the state Commissioner of Labor submits the administration and operation report on the Employment Security Law to the governor from December 31 to January 1.

Requires the commissioner to follow the State Personnel System rules, regulations, and contract requirements.

Provides that an individual may elect to have 5 percent state income tax withheld from unemployment compensation; amounts withheld for state income tax shall remain in the Unemployment Compensation Fund until the tax payment is transferred to the state Department of Revenue.

Provides that an individual may elect to receive either an electronic or a written notice when filing a new claim; the individual may change the election at any time.

### Appeals

Replaces the terms deputy (with adjudicator) and appeal tribunal (with hearing officer) throughout the appeals statutes.

Provides that a determination notice concerning the rate of combined tax applicable to each employer, and whether services performed by an individual were employment or for an employer, shall become binding and conclusive unless appealed by the employer within 30 days after mailing or delivery of such notice with the department in accordance with rules and regulations adopted and promulgated by the commissioner. (Previously, unless such notice was appealed by the employer within 30 days after mailing or delivery of such notice with an appeal tribunal.)

### Monetary Entitlement

Increases, for benefit years on or after January 1, 2018, the wage requirements for monetary eligibility to \$4,145.74 (previously \$4,108); maintains the requirement for \$1,850 in one quarter and \$800 in a second quarter.

Provides that the base period wage requirement for eligibility shall be adjusted annually by the cumulative percentage change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics for the 1-year period ending September 30 (effective January 1, 2019, and each January 1 thereafter).

### Nonmonetary Eligibility

Reduces benefits for an individual separated from employment under circumstances which could have been disqualifying by: 2 times the weekly benefit amount if the sole purpose of leaving work was to accept permanent, full-time work that offered better wages or working conditions

Provides that good cause for voluntarily leaving employment shall include leaving employment to attend school.

ENACTED May 22, 2017  
EFFECTIVE August 22, 2017

Provides that, for benefit years beginning on or after September 3, 2017, if an individual whose wage credits in the base period represented part-time employment for an employer and the employer continues to employ the individual to the same extent as the base period, the employer will not be charged if the employer filed timely notice of the facts on which such exemption is claimed (previously, applied to part-time employment for a contributory employer for benefit years beginning before September 3, 2017).

ENACTED March 21, 2017  
EFFECTIVE August 1, 2017

Provides that each employer required to file contribution and wage reports shall file the reports electronically beginning with the calendar quarter in which the employer is first required to file a report. An employer that does not comply with the requirements to file reports electronically is deemed to have failed to submit any employer's contribution and wage report. All contribution payments must be paid electronically. (Effective for taxable years beginning after December 31, 2017.) (Previously, an employer that employs more than 24 employees at any time shall file contribution and wage reports electronically beginning with the calendar quarter in which the employer first employs more than 24 employees. An employer that does not comply with the requirements to file reports electronically is deemed to have failed to submit any employer's contribution and wage report. All payers making payments on behalf of more than one employer shall make all payments electronically.)